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Paper No. 19

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JUN 24 2004

In re Application of:  
Koromo Shirota et al.  
Serial No.: 09/677,867  
Filed: October 3, 2000  
Attorney Docket No.: 00684.003087

DECISION ON PETITION  
TO VACATE OFFICE ACTION

This is a decision on the petition filed February 5, 2003, to vacate the Notice of Allowance and Fee(s) Due (Notice of Allowance) mailed November 5, 2002. The petition is being treated as a petition to the Commissioner under 37 CFR 1.181 requesting review of the examiner's action. No petition fee is required.

The petition is DENIED.

A Notice of Allowance was mailed on November 5, 2002, setting a three-month statutory period to pay the issue fee. The issue fee was not paid but the instant petition was filed instead on February 5, 2003, the due date of the issue fee.

Petitioner asserts that The Notice of Allowance mailed November 5, 2002 was improper and should be vacated because it was issued while the application was under suspension of action pursuant to 37 CFR 1.103(c). It is asserted that the examiner of record, K. Feggins, was informed during a telephone interview on February 5, 2003, that the Notice of Allowance was erroneously mailed on November 5, 2002, while the application was under suspension under 37 CFR 1.103(c) and, because petitioner intended to submit additional papers in this case, it was requested that the examiner not take any further action until notified by the petitioner.

A review of the file record indicates that the application was initially allowed on May 21, 2002. A Request for Continued Examination (RCE) was filed on August 26, 2002 along with a submission and a request for suspension of action under 37 CFR 1.103(c). A letter acknowledging the suspension of action for 3 (three) months was mailed on September 26, 2002. Accordingly, action by the Office was suspended until at least November 26, 2002. The Notice of Allowance was issued on November 5, 2002 while the application was under suspension of action.

It is noted that an amendment was filed on May 30, 2003 and a supplemental Information Disclosure Statement (IDS) was filed on July 18, 2003 as evidence by a postcard receipt submitted on March 2, 2004.

Pursuant to 37 CFR 1.181(f): "The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable." The petition was filed on February 5, 2003, and is untimely because it was filed three month from the date of the Notice of Allowance and its filing did not stop the statutory period for paying the issue fee.


The Notice of Allowance was mailed three weeks before the expiration of the suspension period. If the petitioner was dissatisfied because it is deemed that the Notice of Allowance was issued prematurely, then action should have been taken promptly to inform the Office but was not until three months later. Further, the petition indicated that petitioner intended on submitting additional papers. The record reveals that an amendment to the claims was not submitted until May 30, 2003, which was more than nine months from the filing date of the RCE, and a supplemental IDS was filed on July 18, 2003, eleven months after the RCE was filed, and clearly after the suspension expired.

Because the issue fee was not timely paid, the application is abandoned.

Petitioner may wish to consider filing a petition under 37 CFR 1.137 (a) or (b) to revive the application.

Any inquiry concerning this petition should be directed to Hien H. Phan, Special program Examiner, at (571) 272-1606.

The application is being returned to Files Repository.



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